



Appl. No. : 10/624,864
Filed : July 22, 2003

REMARKS

Claims 1-31 remain pending. Claims 1-31 stand rejected. Independent Claims 1, 14, 16, 25, 28, and 30 have been amended. The amendments to the independent claims incorporate a description of the term "fixation component," as recited in the specification, into the claims. Support for these amendments can be found throughout the original claims and the specification, including the figures, for example, paragraphs 009, 042, 043, 044, and 046, and Figures 4A-4C, 8, 9, 15, and 16. Claim 12 has also been amended. Support for the amendment can be found throughout the specification and claims as originally filed, for example, Claim 12. New Claims 32-35 have been added. Claims 32-35 depend from Claim 28. Support for Claims 32-35 can be found, for example, in Figures 4-6, and 12A-13N. No new matter has been added by these amendments.

Rejection Under 35 U.S.C §102(b)

Claims 1-31 have been rejected under 35 U.S.C. §102(b) as being anticipated by Mueller (U.S. Pat. No. 5,797,951). It was asserted in the Office Action that Mueller discloses a fixation component (item 16A) and a plurality of telescoping arms. The Applicant respectfully disagrees.

Section 2143 of the M.P.E.P. states that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In the Office Action, the Examiner equated the presently claimed "fixation component" with item 16A in Mueller. However, item 16A and the presently claimed fixation component are not the same and have different functions. Item 16A is a protrusion which has, as depicted in Figure 1 of Mueller, teeth. The teeth are configured so as to allow the ratcheting of the device out to a stable expanded position. These teeth prevent the collapse of the device from the expanded state to its collapsed state. On the other hand, the presently claimed "fixation component" is a structure or composition that serves to fix the attachment device in a vessel to keep the attachment device from moving from its position in the vessel. One example of such a fixation component is item 36, shown in FIG. 4A-4C.

In order to clarify the difference in the claimed fixation component and item 16A of Mueller, the Applicant has amended the relevant independent claims to explicitly recite aspects of the fixation component. Claim 1 now recites "wherein a surface of the fixation component extends beyond the perimeter of variable length." Claim 14 now recites, "wherein said fixation component is located on an outer surface of said perimeter of variable length." Claim 25 now recites, "wherein at least a portion of said fixation component is positioned outside of the perimeter of the attachment device." Claim 28 now recites, "wherein a part of said fixation component is positioned between an outermost edge of the perimeter of variable length and the wall of the lumen when the attachment device is in the lumen." Each of these amendments explicitly draws a distinction between the placement and configuration of item 16A of Mueller and the present fixation component. Additionally, Claim 16 now recites, "wherein said fixation component is configured to embed itself in the wall of the lumen when the attachment device is expanded to the second state, so as to anchor the attachment device." Finally, Claim 30 now recites a "fixation means" rather than a fixation component and thus, according to 35 U.S.C. §112, paragraph 6, is limited to those structures described in the specification and their equivalents. The structures described in the specification as fixation components, and their equivalents, are clearly distinct from item 16A of Mueller.

As discussed in the interview, Applicant considers these amendments sufficient to overcome the Examiner's rejection of the claims under Mueller.

The Applicant would note that because the above independent claims are novel over Mueller, those claims that are dependent from the independent claims are also novel. Additionally, new Claims 32-35 depend from Claim 28. As Claim 28 is novel, so are dependent Claims 32-35.

Finally, the Applicant would note that the present Office Action only identifies two elements as being taught in Mueller, the telescoping arms and allegedly a fixation component. However, dependent claims 2-13, 15, 17-24, 26, 27, and 29 recite at least one additional element. For example, Claim 2 recites a coplanar aspect and Claim 3 recites an M configuration. Similarly, the Applicant notes that independent Claims 14, 16, and 31 recite elements that are not identified or addressed in the present Office Action. As such, the Applicant submits that Claims 14, 16, and 31 are novel over the teachings of Mueller as described in the Office Action. The

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Applicant requests that either all of the elements be addressed in the next Office Action, or the rejection be withdrawn.

Conclusion


The Applicant respectfully submits that for the above recited reasons, as well as other reasons, the rejections be withdrawn. The Applicant respectfully submits that the present application is in condition for allowance. If, however, some issue remains, the Examiner is cordially invited to telephone the undersigned in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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SUMMARY OF INTERVIEW

The Applicant would like to thank Examiner Phan for the opportunity to discuss the 35 U.S.C. §102(b) rejection regarding the Mueller reference (U.S. Pat. No.: 5,797,951).

During the interview, Applicant's representatives indicated that the "fixation component" of the recited claims is not the same structure as item 16A in Mueller. It was further stated that while the structure described as item 16A in Mueller could be part of some embodiments of the present claims, the presently recited "fixation component" is an additional structure that differs from item 16A in its placement and function.